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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: LIN 02 130 56227 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner
Beneficiary

[Redacted]

JUN 12 2004

PETITION: Immigrant Petition for Alien Worker as a Skilled worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[Redacted]

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

PUBLIC COPY

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is a telecommunications and software development company. It seeks to employ the beneficiary as a systems analyst. As required by statute, the petition was accompanied by certification from the Department of Labor. The director denied the petition because he determined that the beneficiary's education is not the foreign equivalent to a United States bachelor's degree. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel contends that the beneficiary's educational credentials are sufficient to meet the requirements of the visa classification.

In pertinent part, Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(g)(2); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is July 10, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of computer support specialist. In the instant case, item 14 describes the "college degree required" as a "Bachelor's." The major field of study must be computer science, math, engineering or a related discipline. The applicant must also have two years employment experience in the job offered or two years experience in a related position of software development. Item 15 states that the applicant must have experience with "4 GL, C++ and GUI programming."

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submits copies of the beneficiary's transcripts and a copy of his diploma from the University of Madras, India. They indicate that he received a Bachelor of Science degree in 1979, following a three-year course of study in mathematics. The record also contains a copy of a 1995 certificate from "Aptech Computer Education" indicating that the beneficiary also holds a "masters diploma in software engineering."

A February 1998 evaluation from Multinational Education & Information Services, Inc. was also submitted in support of the petition. This evaluation concludes:

In summary, [the beneficiary] has a Bachelor degree in Science, Diploma in Computer Programming, Masters Diploma in Software Engineering, certificate in Cobol, and over five years of extensive training and professional experience in software engineering, system analysis and computer program design and development. His education and professional experience are equivalent or exceeding to an individual with a Bachelor degree in Mathematics and Computer Science from an accredited University in the United States.

It is noted that the record does not contain a separate diploma in computer programming or certificate of Cobol as described by this evaluation.

On April 30, 2002, the director requested additional evidence from the petitioner to support the claim that the beneficiary holds a U.S. baccalaureate degree or a foreign equivalent degree. The petitioner responded by submitting an evaluation from Worldwide Education Evaluators, Inc. This evaluation determines that the beneficiary's three-year bachelor's degree from the University of Madras and his course of study at Aptech Computer Education is equivalent to a U.S. Bachelor of Science degree in computer science and mathematics.

The director denied the petition, concluding that the beneficiary's educational credentials are not an acceptable equivalency for a United States baccalaureate degree. The director cited the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), which provides that an alien must demonstrate that he holds a United States baccalaureate degree or a foreign equivalent degree to qualify as a professional under the third preference visa classification.

It is noted that the *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides:

[Citizenship and Immigration Services (CIS)] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

The AAO concurs with the director's denial and would note that the only thing the two evaluations seem to agree upon is that the beneficiary's bachelor's degree from the University of Madras is the equivalent of three years of undergraduate study at an educational institution in the United States. Neither evaluation stated that the beneficiary's three year degree from the University of Madras alone is the foreign equivalent of a U.S. baccalaureate degree. Both evaluations reviewed the beneficiary's diplomas and transcripts. The 1998 evaluation combines the beneficiary's education and experience to conclude that he has at least the equivalent of a U.S. bachelor's degree, and the 2002 evaluation considers the completion of formal education at two institutions conferring two separate degrees as the equivalent of a U.S. bachelor's degree. In this case, the AAO cannot consider these conflicting evaluations as having much probative value in evaluating the beneficiary's foreign education.

On appeal, counsel asserts that the labor certification's requirements should be interpreted as allowing consideration of the beneficiary's multiple degrees in evaluating whether the beneficiary has a "foreign equivalent degree." Counsel's assertion is not persuasive. In this case, there is no ambiguity within the terms of this labor certification. It explicitly states that the proffered position requires a bachelor's degree, not a combination of experience or degrees, which could be considered the equivalent of a bachelor's degree. Even if viewed as a petition for a skilled worker, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides that the evidence must show that the alien has the education, training or experience, and any other requirements of the individual labor certification. This labor certification does not define or accept any equivalency less than a bachelor's degree. CIS may not ignore a term, nor impose additional requirements in reviewing a labor certification. See *Matter of Silver*

Dragon Chinese Restaurant, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983).

Because neither the Act nor the regulations indicate that a bachelor's degree must be a United States degree, CIS will recognize a foreign equivalent degree to a United States baccalaureate. There is not a provision in this labor certification, however, that would allow the beneficiary to qualify with anything less than a full U.S. or foreign baccalaureate degree. It is also noted that although the preamble to the publication of the final rule at 8 C.F.R. § 204.5 in 1991 specifically dismissed the option of equating "experience alone" to the required bachelor's degree for a second preference classification as an advanced degree professional or as a professional under the third classification, similar reasoning applies to prohibit the acceptance of an equivalence in the form of multiple lesser degrees, professional training, or any other level of education deemed to be less than a "foreign equivalent degree" to a United States baccalaureate degree. See Fed. Reg. 60897 (Nov. 29, 1991).

On April 15, 2003, counsel submitted a copy of a letter dated January 7, 2003, from Efren Hernandez III, Director of the Business and Trade Services Branch of CIS's Office of Adjudications, and asserts that this letter supports the petitioner's position. Although submission of this letter has been received several months after the deadline for consideration of such evidence, we offer the following comments. It is noted that this letter was written in response to an attorney inquiring about second preference advanced degree professionals. In response Mr. Hernandez stated:

You ask whether the reference to "a foreign equivalent degree" in 8 C.F.R. §204.5(k)(2) means that the *foreign equivalent advanced degree* must be in the form of a single degree. Despite the use of the singular "degree," it is not the intent of the regulations that only a single foreign degree may satisfy the equivalency requirement. Provided that the proper credential evaluations service finds that the foreign degree or degrees are the equivalent of the required US degree, then the requirement may be met. (Emphasis added).

First, this letter is concerned with the "foreign equivalent advanced degree" as it relates to the definition of an advanced degree found at 8 C.F.R. §205.5(k)(2), which states that an advanced degree is "any United States academic or professional degree or a foreign equivalent degree above the baccalaureate level." Second, if applied to the consideration of a foreign degree equivalent to a U.S. baccalaureate degree, the letter's rationale is contrary to regulations, as discussed above. Finally, an Office of Adjudications letter is not binding on the AAO. These letters do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. They merely indicate the writer's analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, *Office of Programs, Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

Based on a review of the requirements of the approved labor certification and the evidence submitted, the AAO cannot conclude that the petitioner has established that the beneficiary possesses either a United States bachelor's degree or a foreign equivalent degree as required by the terms of the labor certification. In absence of evidence that the beneficiary has a bachelor's degree in computer science, math engineering or a related discipline, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

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